IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 81-5865

ROSARIO PALERMO

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY TO BRIEF FOR UNITED STATES IN OPPOSITION

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No. 81-5865

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REPLY TO BRIEF FOR UNITED STATES IN OPPOSITION

JURISDICTION

The Government states that this Court lacks jurisdiction to review the decision of the United States Court of Appeals for the Fifth Circuit as it applies to Rosario Palermo because the Peititon for Writ of Certiorari (No. 81-5865) was not timely filed pursuant to Rules 20.1 and 20.4 of the Rules of this Court. The government also states that Petitioners Young and Fisher failed to timely file their Peititons.

Timeliness under this Court's rules does not raise a jurisdictional question. Durham v. United States, 401 U.S. 481, (1971), overruled on other grounds 423 U.S. 325 (1976) (Petitioner's death required dismissal of Petition). See also Schacht v. United States, 398 U.S. 58, 6364 (1970); Taglianetti v. United States, 394 U.S. 316 N.1 (1969); Heflin v. United States, 358 U.S. 415, 418 N.7 (1959). In Schacht, the Court recognized that the procedural time limitation should not be interpreted as a jurisdictional

requirement, stating:

> We cannot accept the view that this time requirement is jurisdictional and cannot be waived by the Court. The [Rule] contains no language that calls for so harsh an interpretation . . . The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion when the ends of justice so require. Supra at 64.

The time limitation must be waived to allow Petitioner Palermo the opportunity to pursue his appeal on the basis of the legal arguments set forth in his Petition for Writ of Certiorari. Other parties, including the Government, required additional time to file their briefs because of the length and complexity of the trial record and related appellate litigation. None of these parties were harmed or prejudiced by the Petitioner's delayed filing. Accordingly, Petitioner, Rosario Palermo, respectfully requests this Court to waive the procedural time requirement and to grant his Petition for a Writ of Certiorari.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to all counsel of record listed below, pursuant to Supreme Court Rule 28, this 9th day of March, 1982.

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